

REMARKS

This Amendment is filed in response to the Office Action dated Aug. 15, 2008. The Applicant respectfully requests reconsideration. All rejections are respectfully traversed.

Claims 9-16 and 21-32 are pending in this Application.

Claims 9, 14, 21, 24, 29 and 31 have been amended.

No new claims have been added.

Claim Rejections - 35 U.S.C. §103

At paragraphs 3-10 of the Office Action, claims 9-16 and 21-32 were rejected under 35 U.S.C. §103(a) over Deforche, U.S. Publication No. 2004/0258072 (hereinafter “Deforche”) in view of Acharya, U.S. Patent No. 7,110,359 (hereinafter “Acharya”).

The Applicant’s claim 21, representative in part of the other rejected claims, sets forth (emphasis added):

21. A method for improving utilization of a data link coupled to a network comprising:

holding data in one or more queues coupled to a queue manager, *the one or more queues associated with an excess rate component;*

generating scores for the one or more of the queues, the scores to represent ratings of eligibility to transfer data in accordance with the excess rate component;

maintaining a scorecard of the generated scores;

determining that a data link is idle; and

dequeuing, by the queue manager, data from a queue associated with a highest score in the scorecard, and transferring the data onto the data link, in response to determining that the data link has become idle.

Deforche discusses techniques for “enqueueing incoming data packets in sessions, and for storing the sessions in sequential order in service-groups.” *See* Deforche abstract. “A session is defined as a flow of packets that require a particular service... The scheduler 1 maintains per-session queues s₁ ... s_n in which these packets are queued.” *See* paragraph 0067. “Only the head-of-session packets are considered by the scheduler 1.”

See paragraph 0067. “Each data packet may have a priority value for selection...” that affects whether or not the packet is selected for transmission. *See* paragraphs 0026 and 0041.

Acharya discusses a technique in which there are a plurality of output priority queues and “each output priority queue 310-316 may be associated with a different priority. For example, output priority queue 310 may store information having a priority ‘1’ (i.e., a lowest priority indication), output priority queue 312 may store information having a priority ‘2’ (i.e., a higher priority indication)...,” etc. *See* Acharya page 6, line 49 to page 7, line 4..

The Applicant respectfully urges that both Deforche and Acharya are silent concerning the Applicant’s claimed “*the one or more queues associated with an excess rate component*” and “*generating scores for the one or more of the queues, the scores to represent ratings of eligibility to transfer data in accordance with the excess rate component.*”

While the Applicant associates **a queue with an excess rate component**, for example, an EIR component, neither Deforche nor Acharya even mention an excess rate component, much less associating a queue with one.

Further, while the Applicant generates a score for a queue that **represents eligibility to transfer data in accordance with the excess rate component**, Deforche’s “priority value” and Acharya’s “priority” serve very different purposes. Specifically, Deforche’s “priority value” is simply a factor that indicates which packet at the head of a session, where there are multiple sessions, should be picked by a scheduler. *See* Deforche paragraphs 0067, 0026 and 0041. The “priority value” is a property of a packet, not a queue. Further, the “priority value” bears no relation to an excess rate component. Likewise, Acharya “priority” is simply a weight that should be accord a particular queue. *See* page 6, line 49 to page 7, line 4. Such “priority” bears no relation to an excess rate component.

Accordingly, the Applicant respectfully urges that the combination of Deforche and Acharya is legally insufficient to make obvious the present claims under 35 U.S.C. §103 because of the absence of the Applicant's claimed novel "*the one or more queues associated with an excess rate component*" and "*generating scores for the one or more of the queues, the scores to represent ratings of eligibility to transfer data in accordance with the excess rate component.*"

Should the Examiner believe telephonic contact would be helpful in the disposition of this Application, the Examiner is encouraged to call the undersigned attorney at (617) 951-2500.

In summary, all the independent claims are believed to be in condition for allowance and therefore all dependent claims that depend there from are believed to be in condition for allowance. The Applicant respectfully solicits favorable action.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,

/James A. Blanchette/
James A. Blanchette
Reg. No. 51,477
CESARI AND MCKENNA, LLP
88 Black Falcon Avenue
Boston, MA 02210-2414
(617) 951-2500